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DATE MAILED: 12/14/2006

APPLICATION NO.	FILI	NG DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,187 04/26/2001		26/2001	Thomas M. Baer	ARC012001800	2124
26161	7590	12/14/2006		EXAMINER	
FISH & RIC		N PC	LUDLOW, JAN M		
P.O. BOX 10 MINNEAPO		55440-1022		ART UNIT	PAPER NUMBER
	210, 1111	7		1743	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Applicant(s) Ap	<u> </u>			&					
### Examiner ### Art Unit ### Jan M. Ludiow ### 1743 **The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. **Enhances of time raps be available under the positions of 3°C FR 1.736(s), in new root, nowwer, may a reply be timely fine. **Enhances of time raps be available under the positions of 3°C FR 1.736(s), in new root, nowwer, may a reply be timely fine. **Enhances of time raps be available under the positions of 3°C FR 1.736(s), in new root in the second property of the second patent term adjustment. Sea 3°C FR 1.704(s). **Status** 1) **Expossive to communication(s) filed on 22 **September 2006.** 2a) **This action is FINAL.** 2b) **This action is non-final.** 3) **Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. **Disposition of Claims** 4) **Claim(s) **In 3.79-82 and 93-108** is/are pending in the application.** 4) **Claim(s) **In 3.79-82 and 93-108** is/are pending in the application.** 4) **Claim(s) **In 3.79-82 and 93-108** is/are withdrawn from consideration.** 5) **Claim(s) **In 3.79-82 and 93-108** are subject to restriction and/or election requirement. **Application Papers** 9) **The specification is objected to by the Examiner.** 10) **The drawing(s) filed on **In 3.6/are: application to the drawing(s) beld in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). The cath or declaration is obje		Application No.	Applicant(s)						
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Application/Control Number: 09/844,187

Art Unit: 1743

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

 Claims 1-4, 100, 104 drawn to an extraction device in which the carrier closes the opening, classified in class 422, subclass 102.

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- II. Claims 5, 11-13, 93-95, 97-99, 101, 102, 105, drawn to an extraction device with extensions on the carrier, classified in class 422, subclass 102.
- III. Claims 6-10, drawn to a subcombination with extensions on the transfer film, classified in class 422, subclass 99.
- IV. Claims 96, 103, drawn to an extraction device with transfer film, classified in class 422, subclass 102.
- V. Claims 79-82, 106-108, drawn to a method of extraction, classified in class436, subclass 177.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions IV and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it does not require extensions on the transfer film. The subcombination has separate utility such as contact sampling without extraction.

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The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

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- 3. Inventions V and [I-IV] are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used for other methods, such as culturing cells on the transfer film without removing the cells from the transfer film.
- 4. This application contains claims directed to the following patentably distinct species: Groups I, II and [III, IV]. The species are independent or distinct because each has a different defining feature as recited above.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions Art Unit: 1743

unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (571) 272-1260. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jan M. Ludlow

Primary Examiner

Art Unit 1743

Jml

December 11, 2006